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OFFICE OF PETITIONS

In re Application of
Evans et al.
Application No. 10/680,932
Filed: October 7, 2003
Attorney Docket No. 07319-092002

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 1, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the non-final Office action mailed March 29, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on June 30, 2004. A Notice of Abandonment was mailed October 7, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (3). A Response to Notice of Abandonment was submitted on November 15, 2004 traversing the holding of abandonment based on the response being timely filed. However, as there was no evidence of the timely filing, the petition to withdraw the holding of abandonment was dismissed on October 13, 2005.

It is now unclear why the instant petition was not filed until March 1, 2007. A petition under 37 CFR 1.137(b) requires that the *entire delay* in filing a petition to revive must be unintentional, including the time period between October 2005 and March 2007.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.


Liana Walsh
Petitions Examiner
Office of Petitions